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Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ACUITY A MUTUAL INSURANCE
COMPANY, a Mutual Insurance
Company,

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Plaintiff,

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vs.
AAA AIR FILTER CO., INC. a Nevada
Corporation, RAUL ELIJIO GONZALEZ;
GABRIEL JARAMILLO, DOES 1 through
10, inclusive; and ROE BUSINESS
ENTITIES I through X, inclusive,

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Defendants.

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CASE NO:

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**COMPLAINT FOR
DECLARATORY RELIEF**

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COMES NOW Plaintiff Acuity, A Mutual Insurance Company, (hereinafter
"Acuity"), by and through its counsel of record, Michael C. Mills, Esq. of the law firm of
Bauman Loewe Witt & Maxwell, and files the following Complaint for Declaratory Relief
against Defendants AAA Air Filter Co., Inc. a Nevada Corporation, (hereafter AAA) Raul
Elijio Gonzalez (hereafter Gonzalez); Gabriel Jaramillo (hereafter Jaramillo), Does 1
through 10, inclusive; and Roe Business Entities I through X, inclusive,

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1. Plaintiff Acuity is a mutual insurance company which is organized under the
laws of the State of Wisconsin and is authorized to operate in the State of Nevada.

1 2. Defendant AAA Air Filter Co., Inc. is a Nevada Corporation, authorized to
2 operate in the State of Nevada.

3 3. Defendants Gonzalez and Jaramillo are individuals who, along with AAA,
4 are named as defendants in the underlying case of KARINA TINTA-OCHOA,
5 individually, as legal heir, and as Special Administratrix of the Estate of FRANCISCO
6 ROMERO-PADILLA, Deceased; KLARISSA NICOLE ROMERO-TINTA, a minor and
7 legal heir, by and through her natural parent and guardian, KARINA TINTA-OCHOA,
8 Plaintiffs, vs. RAUL ELIJIO GONZALEZ; GABRIEL JARAMILLO; AAA AIR FILTER CO.,
9 INC.; DOES I through X, and ROE CORPORATIONS I through X, inclusive, filed in the
10 Eighth Judicial District Court, Clark County, Nevada, Case No. A-24-885900-C.
11 (Hereafter the “underlying case”). The underlying case was filed in the Eighth Judicial
12 District Court, Clark County, Nevada and was assigned amended complaint”). Plaintiffs
13 filed an Amended Complaint on February 1, 2024 (Hereafter the “underlying amended
14 complaint).

15 4. Defendants Does 1 through 10 and Roe Business Entities I through X are
16 unknown at this time, and may be individuals, partnerships or corporations.

JURISDICTION AND VENUE

18 5. This declaratory judgment action is brought under United States Code, Title
19 28, Section 2201, the Federal Declaratory Judgments Act and the Federal Rules of Civil
20 Procedure 57, Declaratory Judgments.

21 6. Jurisdiction in this matter is based on diversity of citizenship, 28 U.S.C.
22 §1332, in that there is complete diversity of citizenship and that the amount in
23 controversy exceeds the sum of \$75,000.00, exclusive of costs and interest.

24 7. All the facts and circumstances that give rise to the subject lawsuit occurred
25 in Clark County, State of Nevada.

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COMPLAINT FOR DECLARATORY RELIEF

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GENERAL ALLEGATIONS

The Allegations In The Underlying Pleadings

8. On January 26, 2024, the underlying complaint was filed in the Eighth Judicial District Court, Clark County, Nevada in Case No. A-24-885900-C.

9. On February 1, 2024, the underlying amended complaint was filed in the Eighth Judicial District Court for Clark County, Nevada. Exhibit 1.

10. Plaintiff's Amended Complaint alleges that a motor vehicle crash happened on or about June 13, 2023.

11. The underlying amended complaint allege that the Plaintiff was operating his vehicle eastbound on Warm Springs Road approaching its intersection with Tomiyasu Lane.

12. At the same time, a truck, owned by the insured AAA and driven by Defendant Gonzalez who was an employee of AAA and was in the course and scope of his employment was westbound approaching the same intersection.

13. The underlying amended complaint alleges that the truck was occupied by Defendant Passenger Jaramillo who was also an employee and was also in the course and scope of his employment with AAA.

14. The underlying amended complaint alleges that Defendant Passenger Jaramillo interfered with Defendant Gonzalez's operation of the truck by punching him

15. The underlying amended complaint alleges that the driver was under the influence of alcohol and marijuana, that he failed to maintain his lane of travel, he veered into the path of the Plaintiff's vehicle, causing a crash that resulted in the wrongful death of Plaintiff.

The Inception of the Acuity Policy

16. On July 27, 2022, Plaintiff issued to Defendant AAA a Policy of Insurance. The policy period ran through 07/27/2023. Plaintiff Acuity assigned policy number ZA7788. Exhibit 2

1 17. The policy issued by Acuity included both Business Liability Coverage and
 2 Commercial Excess Liability Coverage.

3 18. The policy issued by Acuity did not include Commercial Auto Coverage.

4 19. On information and belief, AAA's Commercial Auto Coverage was provided
 5 by Progressive Commercial, underwritten by United Financial Casualty Company with a
 6 policy period running from July 27, 2022 – July 27, 2023.

7 20. The underlying amended complaint alleges Negligence as its First Cause of
 8 Action as to all Defendants, including negligence per se, negligent entrustment on the
 9 part of AAA, as well as negligent hiring, training and supervision of the employees.

10 21. In the Second Cause of Action of the underlying amended complaint,
 11 Plaintiffs allege Gross Negligence on the part of the driver and the passenger,
 12 including the operation of the vehicle under the influence of intoxicants, in violation of
 13 the law.

14 22. The Third Cause of Action alleges wrongful death under NRS 41.085(2).

15 23. The Fourth Cause of Action alleges that Defendant AAA is vicariously liable
 16 for the actions of its employees.

17 24. Finally, the Fifth Cause of Action is for loss of consortium by the decedent's
 18 spouse.

19 25. The underlying amended complaint prays for recovery of general and
 20 special damages as well as punitive damages.

21 26. Acuity was notified of the suit filed by the underlying Plaintiffs against AAA,
 22 Gonzalez and Jaramillo.

23 27. On March 8, 2024, Acuity's assigned defense counsel appeared on behalf
 24 of AAA, Gonzalez and Jaramillo. Exhibit 3.

25 28. Acuity has incurred attorney's fees and costs in providing AAA, Gonzalez
 26 and Jaramillo a defense to the underlying amended complaint.

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1 29. On April 19, 2024, Acuity issued a Reservation of Rights letter to AAA,
2 Gonzalez and Jaramillo reserving its rights under Acuity's insurance policy with AAA
3 and seeking recuperation of the fees and costs incurred in the defense. Exhibit 4.

FIRST CAUSE OF ACTION (Declaratory Relief)

6 30. Plaintiff incorporates by reference all allegations contained in Paragraphs 1
7 through 29 of this Complaint.

8 31. Pursuant to United States Code, Title 28, Section 2201, the Federal
9 Declaratory Judgments Act and Rule 57 of the Federal Rules of Civil Procedure,
10 Declaratory Judgments, Plaintiff Acuity seeks a declaration of the duties, rights and
11 interests of the parties as related to the tender of defense and the duty to indemnify

12 32. Plaintiff has been obligated to retain counsel to represent it to prosecute this
13 matter.

14 33. Plaintiff has incurred attorney's fees and costs in prosecution of this action.

15 WHEREFORE, Plaintiff Acuity A Mutual Insurance Company expressly reserves
16 the right to amend this Complaint for Declaratory Judgment during discovery and at the
17 time of the trial of the action herein to include all damages not yet ascertained, and
18 prays for declaratory judgment against the Defendants, and each of them, as follows:

19 1. A declaration that the Acuity policies provide no duty to indemnify
20 Defendants AAA, Gonzalez, or Jaramillo for alleged damages arising from
21 the amended underlying complaint;

22 2. That Acuity does not have and has never had a duty to defend the
23 Defendants AAA, Gonzalez or Jaramillo in the action brought against them
24 in the underlying amended complaint.

25 3. That Plaintiff Acuity is entitled to recover the fees and costs it has incurred
26 in defending Defendants AAA, Gonzalez and Jaramillo in an amount to be
27 proved at trial;

4. A declaration of the court as to the rights, duties and responsibilities of the parties in relation to the allegations made in the underlying amended complaint;
5. An award of attorney's fees incurred by Acuity in prosecuting the subject action;
6. Costs of this action; and,
7. For such other and further relief as the Court deems just and proper in

DATED this 14 day of July, 2024.

BAUMAN LOEWE WITT & MAXWELL

Wavy lines are a common decorative element in traditional Korean pottery, often used to create a sense of movement and fluidity.

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Attorneys for Plaintiff, Acuity A

Attorneys for Plaintiff Acuity A Mutual Insurance Company

COMPLAINT FOR DECLARATORY RELIEF
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1 **INDEX OF EXHIBITS**
2

3 **1** Underlying Amended Complaint.
4 **2** Certified Copy of AAA's Policy with Acuity Effective Date 07-27-22 to Expiration Date
5 07-27-23.
6 **3** Notice of Appearance
7 **4** Reservation of Rights letter.
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